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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CONNIE A. CARDINALE, an individual,

Plaintiff,

vs.

XAVIER BECERRA, an individual sued in his official capacity only; SCOTT R. JONES, an individual sued in his official and individual capacities; COUNTY OF SACRAMENTO, a governmental entity; SACRAMENTO COUNTY SHERIFF'S DEPARTMENT, a public entity; CLINTON ROBINSON (#305), an individual sued in his official and individual capacities; and Does 1 through 20, all sued in their individual capacities,

Defendants.

Case No. 2:20-cv-1325-MCE-CKD

PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION (ECF 67) TO MOTION TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Date: N/A
Time: N/A

1 I. Defendants' Procedural Misstatements.

2 In reciting the procedural history of this litigation, defendants claim that this
3 lawsuit is *only* about the “seizures [of Plaintiff’s firearms] by the Sheriff’s Department
4 and alleged delay in returning Plaintiff’s firearms.” ECF 67 @ 2:8-9. Defendants are
5 Wrong. In the parties’ Joint Status Conference Re Settlement and Case Status (ECF 38
6 filed 6/25/21) defendants acknowledged that Plaintiff’s claims included, in addition to
7 the firearms’ seizures, “procurement and execution of an overbroad search warrant” *and*
8 “unreasonable execution of the warrant, causing significant damage to Plaintiff’s
9 property.” ECF 38 @ 3:24-28.

10 II. It Was Defendants’ Obligation To Seek A Joint Rule 56 Motion.

11 Defendants brazenly claim they were not obligated to seek resolution of their issues
12 on a joint Rule 56 motion because, defendants say, it was *Plaintiff’s* obligation to insure
13 that defendants complied with the Court’s July 2, 2020 Order (ECF 4). ECF 67 @ 3:3-5
14 (Defendants complain they could not comply with the Court’s order because Plaintiff did
15 not inquire of defendants if they too were intending to seek Rule 56 relief.).

16 Though it may come as a surprise to defense counsel, Plaintiff’s counsel was under
17 no obligation to solicit defendants to bring their own Rule 56 motion. Plaintiff’s counsel’s
18 duties and obligations run to his client and to the Court; if defendants need to be told by
19 Plaintiff’s counsel that defendants must seek Rule 56 relief, defendants need to hire new
20 counsel.

21 Furthermore, defendants’ claim they were excused from having not comply with
22 the Court’s July 2, 2020 Order because it was allegedly “impossible” to resolve all issues
23 in one motion, is untrue. Through counsel, defendants could have sought cooperation
24 from Plaintiff and her counsel for having the Court hear a single Rule 56 motion
25 addressing both sides’ issues. Defendants though never sought any such cooperation.
26 Moreover, defendants could have (and should have) asked this Court for permission to
27 bring its own Rule 56 motion. 7/2/20 Order @ page 4, line 8 (“*Absent leave of Court*”
28 Rule 56 issues “must” be raised in a single motion.). Defendants did not seek permission;

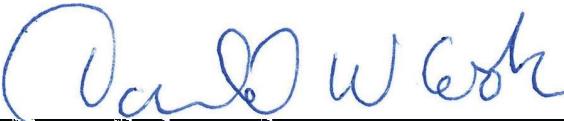
1 instead, defendants simply filed their Rule 56 motion with no acknowledgment of their
2 obligations.

3 **III. Defendants Waive Their Objections To The Timeliness Of Plaintiff's Rule 56**
4 **Motion.**

5 Defendants argue their failure to comply with the Court's July 2, 2020 Order
6 should be ignored because Plaintiff's Rule 56 motion (ECF 45) was not timely failed.
7 ECF 67 @ 4:10-11. Again, defendants and their counsel ignore a fundamental rule of
8 litigation practice. When a party does not object, the party is deemed to have *waived* even
9 a potentially meritorious objection. *Cf. Tritchler v. County of Lake*, 358 F.3d 1150, 1053
10 (9th Cir. 2004) (Failure to assert Eleventh Amendment immunity constitutes waiver);
11 *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992)
12 (Failure to assert timely objections to discovery requests waives all objections.). Since
13 defendants never objected to Plaintiff's Rule 56 as untimely, defendants' present
14 objection to the filing of Plaintiff's motion must be rejected.

15 DATED: December 21, 2023

16 **DONALD W. COOK**
17 Attorney for Plaintiff

18 By 
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20 Donald W. Cook

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